

## Staff Summary Report



**Council Meeting Date:** June 19, 2003

**Agenda Item Number:** 33

**SUBJECT:** Selection of Brockelman Fatica PC Lawyers in response to RFP# 03-134 and authorization to enter into a Purchase and Sale Agreement for Units 100 & 201 of the Brownstones at Orchid House, 21 E. 6<sup>th</sup> Street.

**DOCUMENT NAME:** 20030619casv01 **SOUTHEAST QUADRANT DOWNTOWN TEMPE (0403-02-06)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** On April 14, 2003, the City issued a Request for Proposals for the 1<sup>st</sup> two story Brownstone Unit at Orchid House consisting of Units 100 and 201. The combined units make up a 2,472 square foot office. The proposal had a minimum bid requirement of \$200 per square foot.

On May 14, 2003, the City received one (1)-qualified proposal from the Tempe law firm of Brockelman Fatica PC Lawyers. After review by the selection committee, it has been determined that this proposal meets the requirements of the offering. The proposed use of the Brownstone is to be an owner-occupied law firm. The proposal indicates a purchase price of \$494,400 (\$200 sq. ft.) for the shell unit, with the City responsible for providing basic utility stub-outs to the unit.

On June 6, 2003, the City Council passed Ordinance # 2003.15 authorizing the sale of the Brownstone Units, subject to public offering and the approval of a Purchase and Sale Agreement acceptable to the City Council.

Staff has developed the attached Purchase and Sale Agreement that conveys the Brownstone Units 100 & 201 to Brockelman Fatica PC Lawyers by Special Warranty Deed for the purchase price of \$494,400. The allocation of ten (10) parking spaces will be by sub-license from the City's allocation of parking in the Brickyard. Tempe conveys the property in an "as-is" condition with tenant improvements the responsibility of the buyer. However, in order to make the property ready for improvements, Tempe will be required to provide basic utility connections to the units, such as power, water, and communication conduit.

**PREPARED BY:** Steve L. Nielsen, Community Design and Development Director (x8294)

**REVIEWED BY:** Dave Fackler, Development Services Manager (x8530)

**LEGAL REVIEW BY:** Marlene Pontrelli, City Attorney (x8120)

**FISCAL NOTE:** The City would receive \$494,400 at close of escrow. City required basic improvements for all three Brownstones is estimated at \$50,000.

**RECOMMENDATION:** That the Council select the Brockelman Fatica PC Lawyers response to RFP# 03-134, and authorize the Mayor to execute the Purchase and Sale Agreement for Units 100 and 201 of the Brownstones at Orchid House, 21 E. 6<sup>th</sup> Street.

**AGREEMENT FOR THE PURCHASE OF REAL PROPERTY  
AND ESCROW INSTRUCTIONS FOR THE BROWNSTONE AT ORCHIDHOUSE**

**THIS AGREEMENT FOR PURCHASE OF REAL PROPERTY** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003 (the "date of this Agreement"), and together with the Fidelity Title Insurance Company ("Escrow Agent") printed form of Escrow Instructions, the form of which is modified and attached hereto as **Exhibit A** ("Printed Escrow Instructions"), shall serve as escrow instructions to the Escrow Agent and as an agreement for the purchase and sale between the Buyer and Seller. "Opening of Escrow" shall occur when Escrow Agent accepts these Escrow Instructions as provided at the end of this Agreement and opens the escrow for this Agreement (the "Escrow"). Escrow Agent shall confirm the date of Opening of Escrow by a letter to the parties.

**1. REAL PROPERTY AND TERMS OF PURCHASE.**

1.1 Agreement. Upon and subject to the terms, conditions and provisions set forth herein, City of Tempe, an Arizona municipal corporation ("Seller"), agrees to sell the real property described herein, and BROCKELMAN FATICA PLC, an Arizona professional limited liability company ("Buyer") agrees to buy the real property described herein.

1.2 Real Property. The real property to be sold by Seller and purchased by Buyer is "Identifying Number" Unit 100 and Unit 201 of the "Office Unit" (Unit 4), a condominium as created by that certain Declaration recorded October 15, 1999 at 99-950956 of the Official Records, and as shown on the plat of said condominium recorded in Book 514 of Maps, page 29 in the office of the County Recorder of Maricopa County, Arizona together with those certain rights to the "allocated interests" as set forth in the Declaration of Covenants, Conditions and Restrictions Brickyard on Mill Condominiums, Maricopa County, Arizona as recorded at 99-0950957 on October 15, 1999 in the office of the County Recorder of Maricopa County, Arizona. The address of the real property is known as Suites 110 and 111 of the Brownstones at Orchidhouse, 21 E. Sixth Street, Tempe, Arizona, all as more fully set forth on **Exhibit B**.

1.3 Purchase Price. The purchase price shall be for the sum of \$200.00 per square foot, Unit 100 consisting of 1,206 sq. ft. and Unit 201 consisting of 1,266 sq. ft. for a total price of \$494,400.00 all as more particularly set forth in that certain Request for Proposal dated April 14, 2003 and the Response thereto dated May 14, 2003 in the official records of the City of Tempe.

1.4 Parking Spaces. Seller shall sublicense Buyer to allow Buyer to use two "exclusive use" parking spaces in the Parking Unit which space is reserved from 6:00 a.m. to 8:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday excluding holidays and eight 12-hour permits that shall allow parking from 6:00 a.m. to 6:00 p.m., Monday through Friday and 6:00 a.m. to 12:00 p.m. on Saturday. The Sublicense for Parking Permits is attached hereto as **Exhibit E**.

1.5 Assessments. Upon Close of Escrow Seller agrees to pay any and all assessments levied against the property by Homeowner's Association and to pay separately for all utilities consumed by the users of the real property. In the event, that the Homeowner's Association

does not or cannot assess the real property and collect the assessments directly, then and in that event, Buyer agrees to pay upon receipt of invoice from Seller, 9% of the total assessment which Seller pays by virtue of the Covenants, Conditions and Restrictions recorded against Unit 4 of the Brickyard on Mill Condominium. The obligations pursuant to this paragraph shall be outside of escrow.

1.6 Improvements to Real Property by Seller. Seller agrees to cause construction of utilities, including telephone, water, and electrical stub outs to the real property within 90 days of the date of Close of Escrow at no cost to Buyer. Such stub outs shall include adequate utility conduits including electrical panels, water meters and telephone exchange boxes to the Units.

1.7 Contingency. The Closing (defined below) of the sale is contingent upon approval of this Agreement by the Tempe City Council.

2. **CLOSE OF ESCROW; CONDITIONS PRECEDENT.** With respect to the sale, the following shall be conditions precedent ("Conditions Precedent") to the Close of Escrow (defined below): (i) the requirements pursuant to this Agreement and pursuant to the Owner's Policy (defined below) have been performed, all closing documents and funds required hereunder have been delivered into Escrow, properly executed and notarized by the appropriate parties hereto, including the Escrow Agent, as the case may be; (ii) the Escrow Agent has complied with all of its duties under this Agreement and, acting in its capacity as title insurer, is unconditionally committed and obligated to issue to Buyer the title insurance policy described below in accordance with the title commitments attached hereto and with no change to the Schedule B Exceptions, unless otherwise approved by this Agreement or any amendment to such commitments or exceptions have been approved in writing by the prospective insured party; and (iii) all funds required to be paid hereunder have been properly delivered to the Escrow Agent and are available for immediate distribution by Escrow Agent from the Escrow in accordance with the terms and provisions of this Agreement.

2.1 Closing Date. Subject to the terms of this Agreement, Escrow shall close (the "Closing") on or before September 1, 2003. The recording of the deed shall take place as soon after the Closing as practicable.

2.2. Seller Deposits. On or before July 31, 2003, Seller shall Deposit the following:

A. Special Warranty Deed, **Exhibit D**, for the property subject to the matters described in **Exhibit C** attached hereto and as otherwise may be authorized by this Agreement or approved by Buyer in writing.

B. Certified copy of an ordinance of the City of Tempe authorizing the sale of the real property.

C. Seller's request to Escrow Agent that Escrow Agent, acting in its capacity as title insurer, issue its binding commitment to issue a policy of title insurance to Buyer providing for standard coverage, insuring that Buyer has acquired fee title to the real property in the

amount of the Purchase Price subject only to the title exceptions approved by Buyer set forth in **Exhibit C** and the normal printed exceptions, exclusions and conditions customarily set forth in Escrow Agent's preprinted title policy form, except as any of the foregoing may be modified by this Agreement. Seller shall pay the premium for a Standard Coverage Policy and Buyer shall pay all other premiums and charges for any other coverages or endorsements Buyer may desire; however, in no event may Buyer delay the Closing for same, nor shall any such requests of the title insurer by Buyer be a condition precedent to the Closing of this transaction; and

D.      **Parking Sublicense Agreement.**

2.3      **Buyer Deposits.** On or before July 31, 2003, Buyer shall Deposit the following:

The sum of \$50,000, by cashier's check acceptable to Escrow Agent or by wire transfer of immediately available funds and by Close of Escrow any other amount to be deposited herein or set forth in the Settlement Statement of Escrow Agent, reasonably approved by the parties (consistent with this Agreement) to be paid by Buyer at Close of Escrow. Such amounts shall include Escrow Agents customary charges and fees in connection with the Escrow which are not specifically described herein, such as recording and escrow fees.

2.4      **Assessments.** Assessments shall be pro-rated between Seller and Buyer at Close of Escrow.

2.5      **General.** All payments shall be in United States currency. Buyer and Seller shall execute and deliver any additional documents required under these Instructions or reasonably necessary to consummate the transactions described in this Agreement as provided herein, both prior to and following Close of Escrow. Possession and risk of loss to the property is upon the party owning the property prior to the Close of Escrow, and is transferred to the party receiving and owning the property at the Close of Escrow.

2.5      **Closing Costs.** Seller and Buyer shall equally split Escrow Agent's customary charges and fees in connection with the Escrow.

3.      **DEFAULT.** In the event any covenant, warranty or representation herein of a party is breached or inaccurate, or a party at any time fails to timely and properly comply with or perform any of the covenants, conditions, agreements or obligations required to be performed by said party hereunder, then, except for the timely payment of any monies into any escrow hereunder, said party failing to perform shall be entitled, after receipt of written notice from the other party setting forth the specific failure to perform, defect, or other problem resulting from said party's failure to comply with the terms and provisions hereunder, five (5) days after the date of delivery of said notice in which to cure the failure to perform, defect, inaccuracy or other problem and if the same is not cured on or before the expiration of said cure period, or there is no cure period, then an event of default shall have occurred and the non-defaulting party shall be entitled to all rights and remedies available at law or in equity, including specific performance and damages.

#### 4. GENERAL.

4.1 Successor Benefits; No Assignment. These Escrow Instructions shall be binding upon and inure to the benefit of the heirs, successors, permitted assigns and legally appointed representatives of the parties hereto except as specifically provided herein to the contrary. Buyer shall not transfer, assign or convey any rights in, to or under this Agreement without Seller's prior written consent in its sole and absolute discretion, which consent can be withheld for any reason or no reason. The parties acknowledge the reasonableness of this provision because one consideration to Seller for selling the property at the purchase price herein is the identity of the Buyer and those statements contained in the Response to Request for Proposal as contained in the Official Records of the City of Tempe. Any assignment in violation of this paragraph is void at the option of Seller in its sole and absolute discretion at any time thereafter.

4.2 Time of Essence. Time is of the essence in connection with the performance of these Escrow Instructions.

4.3 Severability. If any provision in these Escrow Instructions or any application thereof shall be invalid or unenforceable, the remainder of these Instructions and any other application of such provision shall not be affected thereby and shall not be rendered invalid or unenforceable.

4.4 Notices. Any notices or notice of demands which shall be required or permitted by law or any of the provisions of these Escrow Instructions shall be in writing and shall be deemed delivered and effective when delivered personally (including reputable, recognized courier), or when successfully telecopied to the number shown below (as prima facie evidenced by a fax confirmation printout by sender's fax machine), provided a copy of the communication is mailed to the addressee as soon as practicable thereafter, or upon delivery when sent by United States registered or certified mail, return receipt requested, postage prepaid. Any other written notice actually received by a party shall be deemed adequate notice. Proof of any delivery is upon the sender; however, recognized courier records showing delivery, proper U.S. Mail return receipts, and signed receipts for delivery shall be deemed prima facie evidence of delivery. All notices and demands shall be delivered, mailed or telecopied, as the case may be, to the addresses or telecopy numbers shown below, addressed to the parties at the names and addresses shown below or such other names, addresses or telecopy numbers as may be indicated by one party to the other party by notice in writing from time to time. The voice telephone numbers below are for the convenience of the parties only.

Seller:

City of Tempe  
Steven L. Nielsen, Deputy Development Services Mgr.  
P. O. Box 5002 (Mailing)  
Tempe, Arizona 85280  
20 East Sixth Street (Delivery)  
Tempe, Arizona 85281  
Telecopy: (480) 350-8579  
Voice: (480) 350-8028

with a copy to:

Clifford L. Mattice, Esq.  
City Attorney's Office  
City of Tempe  
140 East Fifth Street, Suite 301  
Tempe, Arizona 85281  
Telecopy: (480) 350-8645  
Voice: (480) 350-8227

Buyer:

Brockelman Fatica PLC  
c/o Kent Brockelman  
30 East Seventh Street, Suite 201  
Tempe, AZ 85281  
Telecopy: (480) 731-9200  
Voice: (480) 731-9201

Escrow Agent:

Fidelity Title Insurance Company  
Attn: Barbara Teel  
Telecopy: (602) 224-8407  
Voice: (602) 224-8404

All notices to a party or to Escrow Agent, shall also be given to the other party or to Escrow Agent as the case may be. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

4.5 Inconsistencies. In the event any term or condition of the Printed Escrow Instructions are in any way inconsistent with the other portions of this Agreement (or any subsequent amendment hereto) or any other documents which have been or will be prepared and executed by Buyer and Seller in connection with this transaction, then, in such event, the terms and conditions of the other portions of this Agreement or such other documents shall control, as the case may be.

4.6 Attorneys' Fees. In the event any action shall be instituted by either of the parties hereto against the other for the interpretation or enforcement of any of its rights or remedies in and under these Escrow Instructions (if allowed hereunder), venue and jurisdiction shall be in the courts of Maricopa County, Arizona, to be determined by the court sitting without a jury, and the party in whose favor judgment shall be rendered therein shall be entitled to recover from the other party all reasonable expenses and costs incurred by said prevailing party in said action, including

reasonable attorneys' fees fixed by the court. If both parties are awarded relief, such costs, expenses and fees shall be apportioned among the parties hereto in the discretion of the court.

4.7 Counterparts; Entire Agreement. These Escrow Instructions may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. These Escrow Instructions constitute the entire agreement between the parties pertaining to the properties, and they shall supersede all prior agreements and understandings of the parties in connection therewith. No oral agreements or understandings between the parties shall be binding upon them.

4.8 Amendment and Waiver. The parties hereto may by mutual agreement amend these Escrow Instructions in any respect, provided that any such amendment shall be in writing, signed by both parties. No delay in the enforcement hereof by any party shall constitute a waiver or custom of waiver. All waivers shall be in writing and signed by the party to be charged, and the waiver of any condition under these Escrow Instructions shall not constitute a future waiver of said condition or of any other condition.

4.9 Headings; Construction and Governing Law. The headings of the paragraphs herein are for the convenience of the parties only and shall not expand, limit, define, amend, modify or affect the meanings or interpretations of the contents thereof. Reference to a paragraph or a subparagraph includes all of the subparagraphs of either. As the context may require, singular shall include the plural and vice versa, and one form of pronoun or gender shall include any other. These Escrow Instructions are to be performed in the State of Arizona and shall be construed and enforced in accordance with the laws of the State of Arizona.

4.10 Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or Exhibits hereto.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective as of the date specified in the printed Escrow Instructions.

**SELLER:**  
**CITY OF TEMPE**, a municipal corporation

By: \_\_\_\_\_  
Neil G. Giuliano  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**BUYER:**  
**BROCKELMAN FATICA PLC** , an Arizona professional  
limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED:

FIDELITY TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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## **SUMMARY OF EXHIBITS**

<u>Exhibit A</u>	Fidelity Title Printed Escrow Instructions
<u>Exhibit B</u>	Brownstone Property Description
<u>Exhibit C</u>	Preliminary Title Report
<u>Exhibit D</u>	Form of Special Warranty Deed
<u>Exhibit E</u>	Sublicense for Parking Permits

## **EXHIBIT A**

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**Fidelity National Title  
INSURANCE COMPANY**

2390 E. Camelback Road, Suite 120 • Phoenix, AZ 85016  
(602) 224-8404 • FAX (602) 224-8407

**SALE ESCROW INSTRUCTIONS/GENERAL PROVISIONS**

Date: \_\_\_\_\_  
Escrow No.: \_\_\_\_\_  
Escrow Officer: \_\_\_\_\_

whose address is \_\_\_\_\_

HEREIN CALLED SELLER,  
and

whose address is \_\_\_\_\_

HEREIN CALLED BUYER,

hereby employ Fidelity National Title Insurance Company as Escrow Agent and Title Insurer in connection with the sale of the following described property:

Assessor's Parcel Number: \_\_\_\_\_

Property Address: \_\_\_\_\_

The following terms and conditions shall be complied with by said parties on or before \_\_\_\_\_ except as otherwise specified herein.

All items check (X) under the columns headed Seller and Buyer are the obligations of same.

			Seller	Buyer
Sales Price to be paid by Buyer which is represented by:	\$ _____	Escrow Fee _____		
Earnest Money	\$ _____	Title Policy Insuring:		
Additional Deposit	\$ _____	Owner _____		
Cash to be deposited on or before Close of Escrow	\$ _____	Lender _____		
Encumbrance due <u>Seller to pay in full, if any</u>	\$ _____	Transfer Fee _____		
With approximate unpaid balance of _____ beginning with installment due _____	\$ _____	Home Protection Plan _____		
Account No. _____		Account Servicing Fee _____		
Encumbrance due <u>Seller to pay in full, if any</u>	\$ _____	Courier/Express Fees, if any _____		
With approximate unpaid balance of _____ beginning with installment due _____	\$ _____	Broker's Commission of _____ 0.00%		
Any variation in amount of encumbrance(s) shall reflect in _____				
Any reserve funds are to be _____				
Balance due Seller _____	\$ _____			
To be evidenced by:		Termite Inspection and Repairs, if any _____		
		Improvement Lien Assessment _____		
		Reconveyance Processing Fee _____		
		New Fire Insurance Policy _____		
		In the Amount of \$ <u>As Lender Requires</u>		
		Recording fees shall be charged in accordance with established custom unless otherwise specified		
		The Date of proration of the following items checked (X) shall be _____		
		<input type="checkbox"/> Taxes, based on _____ Taxes		
		<input type="checkbox"/> Improvement Lien Assessment		
		<input type="checkbox"/> Irrigation Project Assessments		
		<input type="checkbox"/> Interest on Existing Encumbrances		
		<input type="checkbox"/> Existing Fire Insurance Policy		
		<input type="checkbox"/> Homeowner's Assessment		
		<input type="checkbox"/> Prepaid Rent & Security Deposit		
		<input type="checkbox"/> MIP		
Payable as follows:				
The net proceeds and all future payments under the deferred balance, if any, are to be made payable to: _____		IF PERSONAL PROPERTY is to be transferred as a part of this transaction, a Bill of Sale will be handed to Escrow Agent for delivery to Buyer _____		
( ) as joint tenants ( ) as community property				

**\*\*PROVISIONS AND ADDENDUMS ATTACHED HERETO ARE INCORPORATED HEREIN.\*\***

(NOT BINDING UPON ESCROW AGENT UNTIL FULLY EXECUTED AND DEPOSITED WITH ESCROW AGENT)

BUYER'S SIGNATURE: \_\_\_\_\_

SELLER'S SIGNATURE: \_\_\_\_\_

## ESCROW GENERAL PROVISIONS

Escrow No. \_\_\_\_\_

Seller and Buyer hereby employ Fidelity National Title Insurance Company as Escrow Agent in connection with the sale of the property which is the subject of this transaction. Seller and Buyer agree to the following provisions.

1. Seller and Buyer will prepare and deposit with Escrow Agent all documents necessary to complete the sale as established by the terms of these instructions and hereby authorize Escrow Agent to deliver or record said documents as required herein. According to Section 1521 of the Tax Reform Act of 1986, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 to the Internal Service. Pursuant to the Foreign Investors in Real Property Tax Act, the Internal Revenue code, Sections 1445 and 6039 C, and any applicable state codes affecting same, Seller and Buyer herein warrant that they will obtain independent legal advice relative to their obligations and will take all steps in order to comply with such requirements and agree to hold Fidelity National Title Insurance Company harmless relative to their compliance therewith.
2. Seller and Buyer direct that all funds payable in connection with this Escrow shall be paid to Escrow Agent unless otherwise specified. All disbursements shall be made by check of Escrow Agent. All funds received in this escrow shall be deposited with other escrow funds in a general escrow account or accounts of Escrow Agent with any state or national bank, and may be transferred to any other such general escrow account or accounts. Escrow Agent is under no obligation to disburse any funds represented by check or draft until it is notified that such check or draft is honored. Seller agrees to refund to Escrow Agent any disbursement made by Escrow Agent to Seller or for the Seller's benefit in the event any Buyer's check or draft is subsequently dishonored. Escrow Agent is not responsible for any loss caused by the failure of a financial institution. Escrow Agent may require a certified or cashier's check. The failure of Escrow Agent to present a check for clearance is not a waiver of its right to reimbursement for a check that has been dishonored.
3. Seller and Buyer authorize Escrow Agent to act upon any statement furnished by a lien holder or his agent, without liability or responsibility for the accuracy of such statement.
4. Seller and Buyer agree that there shall be no responsibility on the part of Escrow Agent or Account Servicing Agent to see that the fire insurance provided for herein is renewed upon expiration, or otherwise kept in force, whether during the interim and/or subsequent to the close of Escrow.
5. Seller and Buyer authorize Escrow Agent to complete any necessary fire insurance endorsement requests and deliver any policies deposited in escrow.
6. Seller and Buyer authorize Escrow Agent to pay from available funds held by Escrow Agent for said purpose all amounts necessary to procure documents and all other charges and obligations necessary to consummate this transaction.
7. Seller and Buyer acknowledge and agree that the transfer of possession of the property and the transfer of utilities and collection of the cancellation premium from the Seller's fire insurance policy shall be handled direct and outside of escrow and Escrow Agent shall have no responsibility therefor.
8. Seller and Buyer direct that when these instructions and all title insurance related requirements have been complied with, Escrow Agent shall deliver by recording in the appropriate public office all necessary documents, disburse all funds in accordance with these instructions and issue the title insurance policy.
9. Seller and Buyer shall jointly and severally indemnify and hold harmless Escrow Agent from, for and against all costs, expenses, damages, liabilities, and attorneys' fees which Escrow Agent may incur or sustain in connection with these instructions or the transaction contemplated hereby, any court action (including, but not limited to, any interpleader action) or any servicing account arising herefrom and will pay the same on demand.
10. Escrow Agent is hereby granted a lien upon all funds, property and instruments held in escrow, and Escrow Agent is hereby authorized to reimburse itself from the funds held or collected in this escrow or any servicing account arising herefrom for all charges, damage, expense or liability which it may incur or sustain in connection with the escrow or the servicing account.
11. Escrow Agent has the right to resign upon written ten-day notice. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Agent shall have no liability hereunder.
12. If any check for earnest money is dishonored for any reason, at Seller's option, Seller may elect in writing to cancel these instructions and, upon such election, shall be immediately released from all obligations under these instructions.
13. Except as otherwise provided herein, any party who wishes to cancel these instructions because of any material breach by another party, and who is not in material breach except as occasioned by a material breach by the other party, may cancel these instructions by delivering written notice of cancellation to both the breaching party and to the Escrow Agent stating the nature of the breach. Cancellation shall become effective immediately upon delivery of the written notice of cancellation to both the breaching party and the Escrow Agent. In the event of a dispute between Seller and Buyer regarding earnest money deposited in escrow, Seller and Buyer authorize Escrow Agent to release the earnest money pursuant to the terms and conditions of these instructions. Seller and Buyer specifically authorize Escrow Agent to act in its sole and absolute discretion in the release of earnest money. Seller and Buyer agree to hold harmless and indemnify Escrow Agent against any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorneys' fees, arising from or relating in any way to the release of earnest money. Notwithstanding any other provision herein, Escrow Agent may at its election and in its sole discretion in the event of any conflicting demands made upon it concerning these instructions or this escrow, hold any money and documents deposited hereunder until it receives mutual instructions by all parties or until a civil action shall have been concluded in a court of competent jurisdiction determining the rights of the parties. In the alternative, Escrow Agent may at any time at its discretion commence a civil action to interplead any conflicting demands to a court of competent jurisdiction and shall be entitled to deduct its costs and attorneys' fees from funds deposited in connection therewith.
14. Upon cancellation of these instructions, if commissions are claimed to be due from Seller or Buyer to any licensed Real Estate Broker, and if the Broker has deposited in escrow a written commission agreement or commission authorization executed by a party to this escrow, Escrow Agent is hereby authorized to disburse funds in accordance with the agreement or authorization. Further, the party obligated to pay the commission shall not acquiesce in or agree to any mutual cancellation of these instructions without the written approval of the Real Estate Broker.
15. If the office of Escrow Agent is closed on any day of compliance with these instructions, the requirement may be met during Escrow Agent's regularly scheduled business hours on the next succeeding day Escrow Agent is open for business.

Continued on following page

Initials: \_\_\_\_\_

16. Time is of the essence of any agreement to pay or perform hereunder. No payment of Seller, Buyer, Mortgagor, or Trustor of any amounts payable in connection herewith shall be received or recaptured by Escrow Agent unless all amounts due from such party as of the date of compliance are paid.

17. All prorations and/or adjustments called for in this escrow shall be made on the basis of a thirty day month unless otherwise instructed in writing by Seller and Buyer. Escrow Agent shall use information contained on the last available tax statement, rental statement as provided by Seller, beneficiary's statement and/or fire insurance policies deposited in escrow for the prorations provided for herein. Tax bills issued after close of escrow shall be handled direct and outside of escrow. "Close of Escrow" shall mean recordation of the deed or instrument which created the insurable interest under the policy of title insurance to be issued in connection with this transaction.

18. Fidelity National Title Insurance Company is hereby relieved of all responsibility and/or liability in the event any subsequent tax bill amounts are different than those amounts used as a basis for the tax proration in this transaction.

19. If for any reason funds are retained or remain in escrow, Escrow Agent may deduct therefrom a reasonable monthly charge as custodian thereof of not less than \$25.00 per month.

20. The title insurance provided for herein, unless otherwise specified, shall be evidenced by the standard form of title insurance of Fidelity National Title Insurance Company on file with the Insurance Director of the State of Arizona subject to exceptions shown in the Commitment for title insurance and any amendments thereto.

21. Escrow Agent has made no investigation concerning said property as to environmental or toxic waste issues. Any due diligence required or needed, if applicable, will be performed direct and outside of escrow. Escrow Agent is released from any liability in connection therewith. Additionally, Escrow Agent's knowledge of matters affecting the property, provided such facts do not prevent Escrow Agent's compliance with these instructions, does not create any duty or liability other than Escrow Agent's responsibility under these instructions.

22. Escrow Agent shall be authorized to execute, as the parties' legal representative, the Affidavit required by Arizona Revised Statutes, Section 42-1612, should any party fail to execute and furnish same to Escrow Agent prior to close of Escrow.

23. Unless Escrow Agent is instructed otherwise, Seller and Buyer herein agree to execute a Servicing Instructions Agreement appointing Fidelity National Title Insurance Company as Servicing Agent for all future payments due under the encumbrance being created herein.

24. Fidelity National Title Insurance Company serves as an escrow agent in connection with these instructions and cannot give legal advice to any party hereto.

25. These instructions and any additional instructions necessary to complete this transaction and close this escrow may be executed in counterpart.

BUYER'S SIGNATURE:

SELLER'S SIGNATURE:

## **EXHIBIT B**

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**LEGAL DESCRIPTION**

Order No.: 19501470 - A

Identifying No. 100 and Identifying No. 201, UNIT 4, THE LOFTS AT ORCHIDHOUSE, a Condominium, as provided in the Declaration of Covenants, Conditions and Restrictions for The Lofts at Orchidhouse, a Condominium dated August 30, 2000 and recorded August 31, 2000 as Document No. 2000-0674195 and Declaration of Annexation recorded \_\_/\_\_/\_\_, in Instrument No. \_\_\_\_\_, of the records of the Maricopa County Recorder, as amended or supplemented from time to time and the Condominium Map of THE LOFTS AT ORCHIDHOUSE, a Condominium, recorded in Book 523, Page 10 as amended or supplemented from time to time.

## **EXHIBIT C**

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# Fidelity National Title

INSURANCE COMPANY

## COMMITMENT FOR TITLE INSURANCE

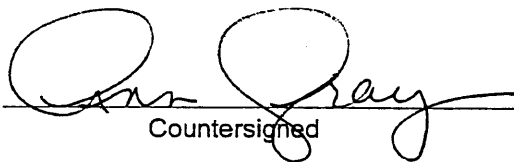
*FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California Corporation, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefore; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.*

*This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.*

*This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligation hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.*

*IN WITNESS WHEREOF, the Company has caused this Commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."*

**Fidelity National Title Insurance Company**

  
Countersigned

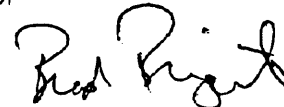


BY



President

ATTEST



Secretary

## CONDITIONS AND STIPULATIONS

1. The term "mortgage", when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate of interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, exclusion from coverage, and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest or the lien of the insured mortgage covered hereby or any action asserting such claim, shall be restricted to the provisions and Conditions and Stipulations of the Commitment.

**Fidelity National Title Insurance Company**

**COMMITMENT FOR TITLE INSURANCE**

**SCHEDULE A**

Order Number: 19501470 - A  
Amendment

1. Effective Date: May 20, 2003, 07:59 A.M.
2. Policy or Policies to be issued: Amount of Insurance  
ALTA Owner's Policy (10-17-92) Standard Covea 1,000.00  
Proposed Insured:  
TO COME
3. The estate or interest in the land described or referred to in this Commitment and covered herein is:  
A FEE
4. Title to the estate or interest in said land is at the effective date hereof vested in:  
THE CITY OF TEMPE, an Arizona municipal corporation
5. The land referred to in this commitment is in the State of Arizona, County of Maricopa and is described as follows:

SEE EXHIBIT "ONE" ATTACHED HERETO AND MADE A PART HEREOF

TITLE OFFICER: Michael LaBrecque

ESCROW OFFICER: Barbara Teel

**EXHIBIT "ONE"**

Identifying No. 100 and Identifying No. 201, UNIT 4, THE LOFTS AT ORCHIDHOUSE, a Condominium, as provided in the Declaration of Covenants, Conditions and Restrictions for The Lofts at Orchidhouse, a Condominium dated August 30, 2000 and recorded August 31, 2000 as Document No. 2000-0674195 and Declaration of Annexation recorded \_\_/\_\_/\_\_, in Instrument No. \_\_\_\_\_, of the records of the Maricopa County Recorder, as amended or supplemented from time to time and the Condominium Map of THE LOFTS AT ORCHIDHOUSE, a Condominium, recorded in Book 523, Page 10 as amended or supplemented from time to time.

**COMMITMENT FOR TITLE INSURANCE**

**SCHEDULE B**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company. Rights are reserved to include additional exceptions and/or requirements with respect to any matters arising subsequent to the effective date hereof and prior to the recordation date of the transaction to be insured herein, but any such matters shall be dealt with prior to recordation hereunder.

1. **Exceptions and Exclusions from coverage which will appear in the policy or policies to be issued as set forth in Exhibit A attached.**
2. **Any action by Maricopa County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.**
3. **Property taxes, which are a lien not yet due and payable, including any personal property taxes and any assessments collected with taxes to be levied for the year 2003.**
4. **The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.**
5. **Any obligations imposed upon said land by its inclusion within the following named association:**  
**Brickyard on Mill Condominium Association, an Arizona incorporated association**
6. **Any obligations imposed upon said land by its inclusion within the following named association:**  
**The Lofts at Orchidhouse Condominium Association, an Arizona nonprofit corporation**
7. **Easements, restrictions, and matters shown on the recorded map of said subdivision.**  
**MAP OF TEMPE, recorded in Book 2 of Maps, page 26.**  
**MAP OF WEST TEMPE, recorded in Book 2 of Maps, page 79.**  
**FINAL PLAT OF BRICKYARD ON MILL (FORMERLY KNOWN AS SEVENTH AND MILL) recorded in Book 514 of Maps, page 28.**  
**BRICKYARD ON MILL CONDOMINIUMS, recorded in Book 514 of Maps, page 29.**  
**THE LOFTS AT ORCHIDHOUSE, A CONDOMINIUM, recorded in Book 523 of Maps, page 10.**
8. **Water rights, claims or title to water, whether or not disclosed by the public records.**

9. Any rights of the parties in possession of a portion of, or all of, said land, which rights are not disclosed by the public record.
10. Terms, conditions and matters as set forth in Grant of Easement and Equitable Servitude for Parking Purposes recorded April 28, 1987 in Instrument No. 87-261504.
11. Terms, conditions and matters as set forth in MCW Parking, L.L.C. Development and Disposition Agreement recorded July 29, 1998 in Instrument No. 98-650253.
12. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.  
  
 Granted to: MCW 7th & Mill, a limited liability corporation  
 Purpose: Construction and occupancy  
 Recorded: May 14, 1999, Instrument No. 99-461607  
 Affects: as set forth therein
13. Terms, conditions and matters as set forth in Restrictive Covenant Agreement recorded October 15, 1999 in Instrument No. 99-950945.
14. Terms, conditions and matters as set forth in Amended and Restated Development and Disposition Agreement recorded October 15, 1999 in Instrument No. 99-950946.
15. The matters set forth in the document shown below which, among other things, contains or provides for: certain easements; liens and the subordination thereof; provisions relating to partition; restrictions on severability of component parts; and covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin).  
  
 Entitled: Declaration of Covenants, Conditions and Restrictions Brickyard on Mill Condominiums Maricopa County, Arizona  
 Recorded: October 15, 1999, Instrument No. 99-0950957  
  
 Assignment of Declarant's Rights recorded October 15, 1999 as Instrument No. 99-0950963.  
  
 Amendment(s) of said covenants, conditions and restrictions  
  
 Recorded: August 31, 2000, Instrument No. 2000-0674186  
  
 Assignment of Declarant's Rights recorded in Instrument No. 02-1310265.  
  
 And thereafter Assignment of Declarant's Rights recorded December 18, 2002 in Instrument No. 2002-1366167.
16. Terms, conditions and matters as set forth in Permanent Use License and Operating Agreement recorded October 15, 1999 in Instrument No. 99-950958.
17. Terms, conditions and matters as set forth in Permanent Parking Use License and Operating Agreement recorded October 15, 1999 in Instrument No. 99-950960.

18. The matters set forth in the document shown below which, among other things, contains or provides for: certain easements; liens and the subordination thereof; provisions relating to partition; restrictions on severability of component parts; and covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin).

Entitled: Declaration of Covenants, Conditions and Restrictions The Lofts at  
Orchidhouse, a Condominium Maricopa County, Arizona  
Recorded: August 31, 2000, Instrument No. 2000-0674195

Declaration of Annexation recorded \_\_/\_\_/\_\_, in Instrument No. \_\_\_\_\_.

19. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: City of Tempe, a municipal corporation  
Purpose: Telecommunications conduit, cable and appurtenant facilities  
Recorded: June 20, 2001, Instrument No. 2001-537899  
Affects: as set forth therein

20. Terms, conditions and matters as set forth Notice and Agreement Concerning Bridge recorded August 16, 2001 in Instrument No. 2001-756523.

END OF EXCEPTIONS

**REQUIREMENTS****COMMITMENT FOR TITLE INSURANCE**

The following are the requirements to be complied with:

**NOTE:** All Instruments need to conform with the County Recorder's Instrument Conformance Template

**ARS § 11-480 requires that the:**

Maximum document width is	8 ½ "
Maximum document length is	14"
Minimum print size is	10 point
Minimum top margin is	2"
Minimum left, right and bottom margins be	½ "

1. Provide written approval for the legal description to be insured herein prior to the close of escrow.

The Company reserves the right to make additional exceptions and/or requirements upon review of the above.

2. Property taxes for the full year shown below are paid. For proration purposes the amounts are:

APN: 132-27-158  
Year: 2002

3. Property taxes for the full year shown below are paid. For proration purposes the amounts are:

APN: 132-27-164  
Year: 2002

4. Furnish evidence that all regular and special assessments levied by Salt River Project Agricultural Improvement and Power District which are now due and payable are paid.

5. Furnish evidence that all assessments which are due the owner's association have been paid to and including the closing of this transaction.

Brickyard on Mill Condominium Association, an Arizona incorporated association

6. Furnish evidence that all assessments which are due the owner's association have been paid to and including the closing of this transaction.

The Lofts at Orchidhouse Condominium Association, an Arizona nonprofit corporation



7. Record a certified copy of the Ordinance of the City of TEMPE, authorizing the execution and delivery of all instruments necessary to consummate this transaction.

8. Furnish the name(s) and type of entity, if applicable, of the Proposed Insured.

The Company reserves the right to make additional requirements or exceptions upon receipt thereof.

9. Record a Declaration of Annexation to the Declaration of Covenants, Conditions and Restrictions for the Lofts at Orchidhouse, a Condominium, Maricopa County, Arizona, recorded August 31, 2000 in Instrument No. 2000-674195.

**EXAMINER'S NOTE:**

Said Declaration is necessary to annex UNIT 4 into the above referenced plat and to assign "Identifying Numbers" to those parcels located in UNIT 4.

10. Record a Deed from CITY OF TEMPE, a municipal corporation to TO COME.

**END OF REQUIREMENTS**

**EXHIBIT A  
AMERICAN LAND TITLE ASSOCIATION  
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorney's fees, and the expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - land use
  - improvements on the land
  - land division
  - environmental protection
 This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.
2. The right to take the land by condemning it, unless:
  - a notice of exercising the right appears in the public records on the Policy Date
  - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking

**3. Title Risks:**

- that are covered, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

**4. Failure to pay value for your title.**

**5. Lack of a right:**

- to any land outside the area specifically described and referred to in Item 3 of Schedule A or
- in streets, alleys, or waterways that touch your land.

This exclusion does not limit the access coverage in Item 8 of Covered Title Risks.

**SCHEDULE B  
EXCEPTIONS**

In addition to the Exclusions, you are not insured against loss, costs, attorney's fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.

4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**LAND TITLE ASSOCIATION OF ARIZONA STANDARD COVERAGE POLICY - 1974 (REV 9-86)  
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, nor against costs, attorney's fees or expenses, any or all of which arise by reason of the following:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortages in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in Schedule A, or in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing in this paragraph shall modify or limit the extent to which the ordinary right of an abutting owner for access to a physically open street or highway is insured by this policy.

7. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation, whether or not shown by the public records at Date of Policy.
8. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records.
9. Defects, liens, encumbrances, adverse claims, or other matters (a) whether or not shown by the records at Date of Policy, but created, caused, suffered, assumed or agreed to by the insured claimant; (b) not shown by the public records and not otherwise excluded from coverage but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had been a purchaser or encumbrancer for value without knowledge.

## EXHIBIT A (CONTINUED)

### AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92) AMERICAN LAND TITLE ASSOCIATION LEASEHOLD LOAN POLICY (10-17-92) SCHEDULE OF EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy, or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid

value for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage, and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

### AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92) AND AMERICAN LAND TITLE ASSOCIATION LEASEHOLD OWNER'S POLICY (10-17-92) SCHEDULE OF EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy, or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. Any claim which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above ALTA policy forms may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following General Exceptions:

### SCHEDULE B EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

#### PART 1

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.

3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortages in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters accepted under (a), (b), or (c) are shown by the public records.

## EXHIBIT A (CONTINUED)

### AMERICAN LAND TITLE ASSOCIATION HOMEOWNER'S POLICY OF TITLE INSURANCE FOR A ONE-TO-FOUR FAMILY RESIDENCE (10-17-98)

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. land use
  - d. improvements on the land
  - e. land division
  - f. environmental protectionThis Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the policy Date and is binding on You if You bought the Land without knowing of the taking.

4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

### RESIDENTIAL TITLE INSURANCE POLICY ONE-TO-FOUR FAMILY RESIDENCE ENHANCED VERSION (1997)

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - a. land use;
  - b. improvements on the land;
  - c. land division; or
  - d. environmental protection.This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.  
This exclusion does not limit the coverage described in Item 12c and d, 13 and 18 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
  - a. a notice of exercising the right appears in the public records on the Policy Date; or
  - b. the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

3. Title Risks:
  - a. that are created, allowed, or agreed to by you;
  - b. that are known to you, but not to us, on the Policy Date - unless they appeared in the public records;
  - c. that result in no loss to you; or
  - d. that first affect your title after the Policy Date - this does not limit the coverage described in Items 3b, 6, 17 and 18 of Covered Title Risks.
4. Failure to pay value for your title.
5. Lack of a right: (i) to any land outside the area specifically described and referred to in Item 3 of Schedule A or (ii) in streets, alleys, or waterways that touch your land.  
This exclusion does not limit the coverage described in Items 5 and 12a of the Covered Title Risks.

## **EXHIBIT D**

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Recording Requested by:  
Fidelity National Title Insurance Company

When recorded mail to:

BROCKELMAN FATICA PLC  
30 E. Seventh Street, Suite 201  
Tempe, Arizona 85281

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**SPECIAL WARRANTY DEED**

Escrow No.

For the consideration of TEN AND NO/100 DOLLARS, and other valuable considerations, I or we, City of Tempe, an Arizona municipal corporation, the GRANTOR does hereby convey to Brockelman Fatica PLC, an Arizona professional limited liability company, the GRANTEE, the following described property attached hereto in Exhibit A situated in Maricopa County, Arizona:

**Subject To:** Existing taxes, assessments, covenants, conditions, restrictions, rights of way and easements of record.

And the GRANTOR binds itself and its successors except as to all matters shown on Exhibit "B" attached hereto and incorporated herein by this reference and any matter an accurate survey would reflect, to warrant and forever defend the title to the Property unto Grantee, its successors and assigns, from and against only Grantor's prior acts affecting title and none other.

DATED: \_\_\_\_\_

**City of Tempe, an Arizona municipal  
corporation**

By: \_\_\_\_\_  
Its: Mayor

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

On \_\_\_\_\_ before me, the undersigned Notary Public, personally appeared Neil G. Giuliano, Mayor of the City of Tempe, an Arizona municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity.

WITNESS my hand and official seal.

Notary Public

My Commission Expires:

## **EXHIBIT E**

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Recording Requested by:  
Fidelity National Title Insurance Company

When recorded mail to:

BROCKELMAN FATICA PLC  
30 E. Seventh Street, Suite 201  
Tempe, Arizona 85281

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### SUBLICENSE OF PARKING USE LICENSE

This Sublicense for the use of parking spaces is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the City of Tempe, an Arizona municipal corporation ("Licensor") and Brockelman Fatica PLC, an Arizona professional limited liability company ("Licensee").

#### RECITALS:

A. Licensor is the owner of certain parking rights within Unit 1 of the Brickyard on Mill Condominiums as described in the plat of record in Book 514 of Maps, page 29, and the Declaration of Covenants, Conditions and Restrictions (as amended, the "Condominium Declaration") recorded at pages 10-15 as document no. 99-950957 of the records of Maricopa County and is a multi-level underground parking facility.

B. Licensor and Licensee entered into that certain Agreement for the Purchase of Real Property dated the \_\_\_\_ day of \_\_\_\_\_, 2003, in which Licensee purchased "Identifying Number" Unit 100 and Unit 201 of the "Office Unit" (Unit 4) of the Lofts at Orchidhouse.

C. Pursuant to those Parking Use License Agreements recorded at 99-0950958, 99-0950960, and 99-0950974, Licensor hereby sublicenses and grants the rights to use of certain parking spaces as more particularly set forth herein to Licensee to be used in connection with the ownership of Identifying Number Unit 100 and Unit 201 of the "Office Unit" (Unit 4).

1. Grant of License. Licensor hereby grants to Licensee a license to use the parking facilities as follows:

- (a) Licensee will be entitled to have Licensor or the parking operator issue two 24-hour permits and up to eight 12-hour permits as those permits are defined in that certain agreement recorded at 99-0950960.

- DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Mayor

**Notary Public**

My Commission Expires:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

) SS.

)

WITNESS my hand and official seal.

My Commission Expires: